
STATUTORY INSTRUMENTS

2001 No. 3592

The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001

PART IX

APPEALS

CHAPTER IV

APPEALS TO BUILDING SOCIETIES ACT TRIBUNAL

Interpretation

125. In this Chapter—

- (a) references to “the original Building Societies Act” are references to that Act as it has effect immediately before commencement;
- (b) references to “the amended Building Societies Act” are references to that Act as it has effect immediately after commencement by virtue of Schedule 18, the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 or any other order made under the Act.

Preservation of right of appeal under Building Societies Act

126. In this article a “pre-commencement decision” means—

- (a) a decision falling within section 46(1) of the original Building Societies Act (as it has effect by virtue of paragraph 9 of Schedule 6 to the 2BCD Regulations);
- (b) a determination or requirement falling within section 46(2) of that Act.

(2) Where, before commencement—

- (a) a pre-commencement decision was taken against which an appeal may be brought to a tribunal constituted in accordance with section 47 of the original Building Societies Act (“a building society tribunal”);
- (b) the period in which an appeal against that decision could be brought has not expired; and
- (c) no notice of appeal has been sent in relation to the decision,

an appeal may be brought against that decision under section 46(1) or (2) of the original Building Societies Act and the repeal of that section or the repeal or amendment of the section under which the decision was taken does not affect the continuity of the period set by or under that Act as the period within which an appeal against that decision may be brought.

Application of original Building Societies Act to transitional appeals

127.—(1) Notwithstanding the repeal or amendment of provisions in the original Building Societies Act subsections (5) and (6) of section 46, subsections (1), (2), (3), (3A), (5) and (11) of

section 47 and sections 48 and 49 of that Act apply to transitional building society appeals, subject to the modifications set out in this article.

- (2) A “transitional building society appeal” is—
 - (a) an appeal which has been brought in accordance with section 46 of the original Building Societies Act but which has not been determined before commencement; or
 - (b) an appeal brought after commencement pursuant to article 126.
- (3) For the purposes of this Chapter, in the provisions mentioned in paragraph (1)—
 - (a) references to appeals brought under section 46 of the original Building Societies Act are to be read as references to transitional building society appeals; and
 - (b) references to appeals brought under section 46(2) are to be read as references to transitional building society appeals against pre-commencement decisions falling within article 126(1)(b).
- (4) In section 46(5) of the original Building Societies Act, the reference to subsection (3) of that section is omitted.
- (5) In section 49 of the original Building Societies Act, the reference to “the Commission” is to be read as a reference to the Authority and this Chapter applies to any matter remitted to the building society tribunal pursuant to that section as it applies to a transitional building society appeal.

Task of the building society tribunal in relation to a transitional building society appeal

128.—(1) On a transitional building society appeal brought under section 46(1) or (2) of the original Building Societies Act, the question for the determination of the building society tribunal is whether, for the reasons adduced by the appellant, the decision was unlawful or was not justified by the evidence on which it was based.

(2) On making its determination the building society tribunal must remit the matter to the Authority with such directions (if any) as the tribunal considers appropriate for giving effect to its determination.

- (3) The Authority must exercise its powers under—
 - (a) Parts IV and V of the Act;
 - (b) Schedule 3 to the Act;
 - (c) the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001;
 - (d) the amended Building Societies Act,

in the manner most appropriate to give effect to the building society tribunal’s direction.

Decisions taken by the Authority giving effect to building society tribunal determinations

129. Article 122 applies (with appropriate modifications) where the Authority gives effect to a direction given by a building society tribunal as it applies in respect of directions given by a friendly society tribunal.

Test to be applied by building society tribunal

130.—(1) Where in any transitional building society appeal the issues arising for consideration included the society’s actual or anticipated failure to satisfy one or more of the criteria of prudent management in section 45 of the original Building Societies Act, the building society tribunal must consider instead whether that society is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41).

(2) Where in any transitional building society appeal the issues arising for consideration included whether a person was a fit and proper person to hold the particular position that he held, the building society tribunal must consider instead whether that person is a fit and proper person to perform the controlled functions in relation to the regulated activities which correspond to the functions he was performing before commencement.

Modifications to Building Societies Appeal Tribunal Regulations 1987

131. The Building Societies Appeal Tribunal Regulations 1987(1) apply to transitional building society appeals after commencement (notwithstanding their revocation and the repeal of section 48 of the original Building Societies Act) with the following modifications—

- (a) in regulation 2(1), after the definition of “the secretary” is inserted—

““transitional building society appeal” has the meaning given in article 127 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001”;
- (b) at the end of regulation 2, the following paragraph is inserted—

“(3) In these Regulations references to an appeal under section 46(2) of the Act shall be construed as references to a transitional building society appeal brought by a person under section 46(2).”
- (c) in regulation 3 for the words “appeals under section 46 of the Act against decisions of the Commission” are substituted “transitional building society appeals”;
- (d) in regulation 5(2) for the words “the Commission” the first time they occur are substituted “the Authority”;
- (e) in regulation 7 for the words “the Commission” are substituted “the Authority”;
- (f) in regulation 9 for the words “the Commission” are substituted the first time they occur the words “the Authority” and the words “or the Authority” are inserted after the words “the Commission” the second time they occur;
- (g) in regulations 10, 11, 12 and 13, for the words “the Commission” wherever they occur are substituted the words “the Authority”;
- (h) after regulation 13 is inserted the following regulation—

“Hearing as to appropriate action

13A The Tribunal shall inform the parties of the directions (if any) it is minded to give to the Authority and shall afford the parties fourteen days in which to make written representations to it before making its determination.”;

- (i) in regulation 14(1) for the words “the Commission” are substituted “the Authority”;
- (j) in regulation 15 for the words “the Commission” wherever they occur are substituted “the Authority”;
- (k) in regulation 19 for the words “the Commission” both times they occur are substituted the words “the Authority”.

(1) S.I. 1987/891. The Regulations have been amended by the 2BCD Regulations, by S.I. 1993/983 and S.I. 1999/678.